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May 3, 2007

**Via Federal Express**

Mr. Charles Terreni  
Chief Clerk  
Public Service Commission of South Carolina  
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Columbia, SC 29210

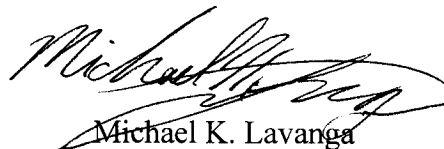
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SO. CAROLINA  
PUBLIC SERVICE COMMISSION

Re: Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. –  
Annual Review of Base Rates for Fuel Costs.  
Docket No. 2007-1-E

Dear Mr. Terreni:

I have enclosed an original and eleven copies of *Nucor Steel-South Carolina's Response in Opposition to Progress Energy Carolinas, Inc.'s Motion for Protective Order* for filing in the above referenced matter. Please note that, given the tight schedule in this proceeding, we have requested that the Commission address this matter on an expedited basis. Please date stamp and return the extra copy for our files in the enclosed envelope.

Sincerely,

  
Michael K. Lavanga

Enclosure

cc: All Parties

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**

**DOCKET NO. 2007-1-E**

|                                       |   |                                     |
|---------------------------------------|---|-------------------------------------|
| IN THE MATTER OF:                     | ) | <b>Nucor Steel-South Carolina's</b> |
| Carolina Power & Light Company        | ) | <b>Response in Opposition to</b>    |
| d/b/a Progress Energy Carolinas, Inc. | ) | <b>Progress Energy Carolinas,</b>   |
| Annual Review of Base Rates for       | ) | <b>Inc.'s Motion for Protective</b> |
| Fuel Costs                            | ) | <b>Order</b>                        |

Nucor Steel-South Carolina ("Nucor") hereby responds to Progress Energy Carolinas, Inc.'s ("PEC") Motion for Protective Order and Response in Opposition to Nucor Steel's Motion to Compel ("PEC Response" or "Response"), filed on May 1, 2007 in this proceeding. In its Response, PEC argues that Nucor's arguments regarding Rule 103-851 of the Commission's Rules of Practice and Procedure are wrong, and asserts that Nucor's behavior in this proceeding somehow warrants a severe limit on discovery. PEC's argument that Rule 33 of the South Carolina Rules of Civil Procedure limits the number of interrogatories a party can ask under Rule 103-851 in a Commission proceeding finds no basis in the law, and PEC's accusations that Nucor is abusing the discovery process find no basis in fact. Accordingly, Nucor requests that the Commission reject PEC's motion for a protective order, and grant Nucor's motion to compel responses to Nucor's discovery requests in this proceeding. Given the tight procedural schedule in this proceeding and the short time remaining before Nucor's testimony is due, Nucor requests that the Commission act on this issue on an expedited basis.

1. As explained in Nucor's Motion to Compel, Nucor has submitted two sets of data requests to PEC so far this proceeding. Nucor served its first set of data requests on March 30, 2007. On April 16, 2007, PEC responded to a handful of the data requests in the first set, and objected to the first set overall on grounds that it was in violation of Rule 33 of the South Carolina Rules of Civil Procedure which limits the number of interrogatories to 50, including subparts, unless authorized by the Commission. Notwithstanding PEC's Rule 33 objection, PEC provided responses to most of the data requests in Nucor's first set over the next several days. On April 19, 2007, Nucor served its second set of data requests. On April 20, 2007, PEC objected to Nucor's second set, claiming that the second set is in violation of Rule 33. PEC stated that it will not respond to Nucor's second set of data requests.

2. Nucor filed its Motion to Compel on April 27, 2007. Nucor observed that Rule 103-851 (Rule 103-833 in the Commission's revised rules) is the Commission's rule governing written interrogatories in Commission proceedings, and that it contains no generic limit on the number of data requests a party may serve to another party. Motion to Compel at at 3-4. Nucor argued that, since there is no generic limit on the number of questions a party may ask, the Commission did not intend to include one. *Id.* at 4-5. Rule 33's 50-question limit, therefore, should not be incorporated into the Commission's rules through Rule 103-854 (Rule 103-835 in the Commission's revised rules). Nucor also cited to a case where the Commission refused to impose the 50 question limit. *Id.* at 5-6.

Finally, Nucor explained why imposing a generic 50 question interrogatory limit would be a very bad policy for Commission proceedings. *Id.* at 5-7.

3. In its Response, PEC advances the counterintuitive argument that “[t]he fact that Rule 103-851 does not place a limit on the number of interrogatories that can be propounded without PSC approval does not mean there is no limit,” and insists that Rule 33’s 50-question limit applies through Rule 103-854. PEC Response at 3. Aside from asserting that Nucor’s interpretation of Rule 103-851 is “simply wrong,” PEC offers no compelling legal arguments to counter Nucor’s position that Rule 103-851’s silence as to the number of interrogatories a party may issue means that the Commission, in propounding its rules, intended not to impose a generic limit on interrogatories. PEC also cites no case law to support the proposition that Rule 33 limits the number of written interrogatories a party may serve in a Commission proceeding.

4. Having advanced no valid legal argument for the generic applicability of Rule 33 to Commission proceedings, PEC goes on to argue that Nucor’s behavior in this proceeding and last year’s fuel proceeding somehow warrants a strict limit on discovery. PEC’s arguments in this regard, which amount to an accusation that Nucor is abusing the discovery process, are based on half-truths and a blatantly false portrait of Nucor’s motives in conducting discovery in this proceeding.

5. To begin with, PEC complains that before PEC even filed its testimony in this case, Nucor had already sent PEC over 300 discovery requests.

PEC Response at 3.<sup>1</sup> PEC asserts that such actions demand that there be limits on discovery. *Id.* What PEC fails to mention is that PEC itself encouraged Nucor to submit discovery prior to the filing of PEC's testimony. In a March 5, 2007 letter to the Commission, Nucor requested that the procedural schedule in this proceeding be modified to allow more time between when PEC filed its testimony and when intervenor testimony is due so that Nucor and other parties would have time to review PEC's testimony, serve data requests, and receive answers back from PEC in time for those answers to be used in the preparation of intervenors' direct testimony. In a March 14, 2007 letter to the Commission responding to Nucor's proposal to modify the schedule, PEC brushed aside Nucor's concerns about the time allowed for discovery, and encouraged Nucor to file discovery requests before PEC's initial testimony was filed:

With regard to discovery, Nucor Steel has participated in numerous PEC fuel cases and is well aware of the issues to be addressed in such cases. Therefore, there is no reason for Nucor to wait until PEC files on May 2, 2007 for Nucor to submit its discovery requests. In fact, it would be helpful to PEC if Nucor were to submit its initial discovery request prior to the filing of PEC's direct case which is the practice of the Office of Regulatory Staff.

In filing its first two sets of discovery well before PEC's direct testimony was due, Nucor was simply following a practice that PEC claimed would be helpful to PEC.

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<sup>1</sup> It should be noted that, while PEC asserts that Nucor has sent over 300 discovery requests, Nucor's first set of data requests contained 50 requests, and Nucor's second set of data requests contained 31 requests, for a total of 81 requests so far. These data requests were comprised of both interrogatories and requests for the production of documents. Although many of Nucor's questions contained subparts, the intent of the subparts is simply to set forth with greater specificity what information Nucor is seeking in the main questions so as to reduce the need for follow-up questions. Given that PEC alone has all the information and documentation to support hundreds of millions of dollars worth of fuel costs, every penny of which will be passed through to ratepayers, trying to make data requests as complete as possible through the use of subparts is an eminently reasonable approach to discovery.

PEC's complaint that Nucor has submitted too many data requests before PEC has even submitted its testimony, therefore, rings hollow.

6. It is also worth noting that the number of data requests Nucor submits in fuel proceedings is mainly driven by the structure of the fuel proceeding itself, and by the fact that Nucor must conduct most of its discovery before it even sees PEC's testimony. For PEC's annual fuel proceeding, crucial test year information is not available until April (the test year ends March 31), and intervenor testimony is due in May. If more time were allowed to conduct discovery between when test year information is available and PEC's testimony is filed and when intervenor testimony is due, Nucor might be able to make its discovery more targeted to what is contained in the testimony, which might reduce the overall number of data requests Nucor submits. But, given the tight schedule in these fuel proceedings and given that Nucor must conduct most of its discovery before it even sees PEC's testimony, Nucor has no choice but to make its discovery broader than it likely would have been if there was ample time to conduct discovery after the filing of PEC's testimony, especially since the opportunity for follow-up questions is limited, at best.

7. Next, PEC complains that in last year's fuel proceeding (Docket No. 2006-1-E), PEC produced over sixteen feet of documents in response to Nucor's discovery requests, but Nucor never came to review the documents at PEC's offices and did not ask them to be copied and mailed to Nucor. PEC Response at 3-4. The critical fact that PEC omits here is that Docket No. 2006-1-E settled

before intervenor testimony was even due, and once the case settled, there was no need for Nucor to review the documents.

8. PEC goes on to compare Nucor with ORS, and explains that PEC readily provides information ORS requests because ORS limits its requests to those areas that are relevant and material. PEC Response at 4. If PEC used the same tactics on ORS as it is using on Nucor, ORS could simply exercise its audit authority to get access to the information it needs. ORS can also meet with and have discussions with PEC personnel, including asking as many oral questions as necessary, in order to obtain information, an option not available to Nucor unless it conducts depositions. PEC's glowing approval of the manner in which ORS conducts its investigation, therefore, should be taken with a grain of salt. Nucor has no audit authority, and therefore must rely heavily on the Commission discovery process to obtain information. Also, in this case and in past cases, the amount of material PEC has produced in response to ORS data requests appears to be of a similar magnitude to that produced in response to Nucor data requests. In this proceeding, for example, PEC has informed Nucor that the responsive materials to Nucor's first set of data requests amounts to approximately 18,000 pages, while the responsive materials to ORS requests amounts to approximately 15,000 pages. It is, of course, impossible to know how relevant to the parties' requests each of these pages is, since PEC makes that call, not Nucor.

9. PEC states that it could go through each of the items in Nucor's second set of data requests and object based on relevance or burdensomeness,

but maintains that it should not have to do this because Nucor's discovery requests are not propounded in good faith. PEC Response at 4-5. Nucor observes that, in response to Nucor's first set of data requests, PEC made no more than five specific objections based on relevance.<sup>2</sup> PEC would be hard pressed to make a rational argument that any of the data requests in Nucor's second set are not relevant to the issues under consideration in this fuel proceeding. As to the review of information provided by PEC in this proceeding, Nucor's attorneys have been in the process of making arrangements with PEC to have materials responding to Nucor's data requests copied at Nucor's expense and sent to Nucor's attorneys.

10. As to PEC's assertion that Nucor's discovery requests are not propounded in good faith and that Nucor is violating Rule 103-867 (PEC Response at 5), even a cursory review of Nucor's first and second sets of data requests demonstrates that PEC's accusation is false. Nucor's questions are detailed and specific, and they are clearly designed to produce information Nucor can use to fully and completely evaluate PEC's fuel costs. Nucor's attorneys note that they have been involved in fuel proceedings and other utility proceedings in numerous states throughout the country for more than twenty years, and the amount of discovery Nucor has served on PEC in this proceeding is typical or less than the amount of discovery intervenors serve in similar proceedings. Further, the level of discovery Nucor has served is by no means

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<sup>2</sup> Nucor believes that PEC was in error in objecting to these data requests on the grounds of relevance. While PEC's relevance objections are invalid, Nucor did not file a motion to compel specifically addressing the relevance objections because, given the short amount of time in this proceeding, Nucor elected to focus on the larger issue of PEC's refusal to respond to Nucor's second set of data requests in its entirety. The same holds true regarding other PEC objections and failures to answer.



inordinate given the complexity of the issues and the amount of dollars at stake in this proceeding. Finally, despite PEC's suggestion to the contrary, Nucor gains nothing from having its attorneys engage in frivolous activities, such as sitting around trying to come up with ways to ask PEC unnecessary questions through the discovery process. Unlike a regulated utility, Nucor cannot simply pass the very substantial costs of participating in Commission proceedings through to its customers.

11. It is important to stress that PEC fuel proceedings should not be treated as rote exercises. Over the past several years, including their proposal in this docket, PEC's fuel factor has increased by well over 50%, which has resulted in substantial rate increases for South Carolina consumers (including millions of dollars per year for Nucor). PEC should not be heard to complain about its claim that it took 300 man hours to compile the materials needed to respond to Nucor's first set of data requests (PEC Response at 2) when hundreds of millions of dollars are at stake in this proceeding for South Carolina consumers. In a case such as this, the Commission should err on the side of encouraging as much scrutiny of PEC as possible, which argues strongly against the discovery limit PEC seeks to impose.

12. Unfortunately, even if the Commission promptly grants Nucor's motion to compel, the results of PEC's actions are to delay necessary information being made available and hamper Nucor's investigation of PEC's fuel costs. We urge the Commission to avoid the bad precedent sought by PEC and firmly come down on the side of a full and complete investigation of PEC's costs.

13. In summary, the Commission should reject PEC's motion for a protective order, grant Nucor's motion to compel, and direct PEC to respond to Nucor's second set of data requests, and any further data requests Nucor propounds in this proceeding. PEC has not supported its argument that Rule 33's 50-question limit applies on a generic basis in Commission proceedings, even though the Commission's own rule on interrogatories contains no such restriction. In fact, as discussed in Nucor's Motion to Compel, reading such a limit into the Commission's rules would be very poor policy. Fuel proceedings are not like fender-benders or slip-and-fall cases, where a 50 question limit on written interrogatories absent leave of the court to file more is a reasonable restriction. Fuel proceedings are highly complex and technical proceedings where factors – including the need for the record to include as much information as possible, the fact that the amounts and issues in controversy are substantial by any measure, and the importance of the issues at stake – “weigh overwhelmingly against” the imposition of a 50-question data request limit.<sup>3</sup> Further, PEC's complaint that Nucor's behavior in this proceeding and in prior fuel proceeding warrants a 50-question limit is simply not supported by the facts. Finally, PEC's accusation that Nucor is not acting in good faith in this proceeding should be dismissed for what it is – a tactic to limit or avoid thorough scrutiny of PEC's fuel practices.

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<sup>3</sup> See Docket No. 2003-326-C – *Analysis of Continued Availability of Unbundled Local Switching for Mass Market Customers Pursuant to the FCC's Triennial Review Order* and Docket No. 2003-327-C – *Availability of Unbundled High Capacity Loops at Certain Locations and Unbundled High Capacity Transport on Certain Routes Pursuant to the FCC's Triennial Review Order*, Order Denying Reconsideration, Order No. 2004-500 at 6-7 (2004).

WHEREFORE, for the reasons set forth above, Nucor respectfully requests that the Commission: (1) reject PEC's motion for a protective order; (2) grant Nucor's Motion to Compel, and (3) direct PEC to provide full and complete responses to Nucor's second set of data requests no later than twenty days after the date the second set was issued and provide responses to any additional data requests Nucor may serve in this proceeding.

Respectfully submitted,

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Counsel for Nucor Steel – South  
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Date: May 3, 2007

BEFORE THE  
PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2007-1-E

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In the Matter of:

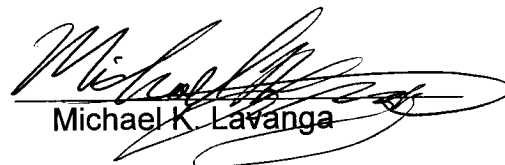
Carolina Power & Light Company  
d/b/a Progress Energy Carolinas, Inc.  
Annual Review of Base Rates  
For Fuel Costs

Certificate of Service

This is to certify that a copy of the foregoing document, **Nucor Steel-  
South Carolina's Response in Opposition to Progress Energy Carolinas,  
Inc.'s Motion for Protective Order**, was served upon the following parties at the  
addresses set forth by first-class mail, electronic mail, telefax, or Federal Express  
on this the 3rd day of May, 2007:

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